IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6607 OF 2004

Janardhan Vasant Yadav .. Petitioner

Versus

Deputy Collector, Mumbai City & Ors. .. Respondents

Mr.L.M.Acharya for the petitioner

Mr.R.D.Rane, A.G.P. for the respondents

CORAM: A.P.SHAH & S.U.KAMDAR, JJ

DATED: 23RD AUGUST, 2004

ORAL JUDMENT (PER S.U.KAMDAR, J.):

1. The order dated 8th July 2004 issued by the Office of the Collector & District Magistrate, Mumbai City, Mumbai refusing to issue the caste certificate to the petitioner is the subject matter of challenge in the present petition. A few facts of the case are as under:

2. The petitioner claims that he belongs to

’Hindu-Ahir’ caste. The said ’Hindu-Ahir’ caste was included in Nomadic Tribe Category at Serial No.29 vide G.R.No.CBC-1089(203)/MVK. However, there was a condition placed that a person claiming to be in the said category ought to have looked after sheeps/goats for a minimum period of 3 months in a year.

3. On 6th August 1992, the said condition was removed by G.R. dated 6th August 1992. On 28th December 2001, an application was made by the petitioner to the Collector seeking a Caste Certificate as belonging to caste Hindu-Ahir. In support of his claim, the petitioner filed various documents. On 31st December 2001, in pursuance of the application, the Competent Authority, Deputy Collector issued a caste certificate to the petitioner certifying that he belongs to ’Hindu-Ahir’ caste and falls in OBC category. On 8th January 2002 the Caste Validity Certificate was issued by the Caste Certificate Verification Committee confirming that the petitioner belongs to ’Hindu-Ahir’ caste. On 11th February 2002, the

petitioner participated in the elections to the Mumbai Municipal Corporation from Ward No.25 which was a reserved seat for Backward Class. On 21st February 2002, an election petition was filed by the losing candidate namely, Mr.Baban Gaonkar being Election Petition no.59 of 2002 for setting aside the election of the petitioner on the ground that the petitioner is not from the OBC category and thus, not entitled to contest on the said reserved seat. The said election petition is still pending.

4. By an order dated 23rd July, 2002, the caste validity certificate issued to the petitioner was cancelled. This order was passed on a complaint filed by the defeated candidate inter alia contending that petitoner does not belong to other backward class. However, the said cancellation order was passed on the ground that the petitioner's caste 'Hindu-Ahir was wrongly classified as Nomadic Tribe in place of O.B.C. because of the computer error as the same was not updated. On 14th August 2002, the petitioner was disqualified on the basis of the aforesaid order

passed by the Collector. The petitioner challenged the said order in Writ Petition No.4501 of 2002. The said writ petition came to be admitted and disqualification order was stayed. On 26th August 2002, the petitioner applied afresh for the caste certificate under the category of Nomadic Tribe. The said application was pending for a long time. Suddenly, on 8th July 2004, the respondent no.2 has passed the impugned order rejecting the application of the petitioner. The respondent no.2 has rejected the application on the ground that from the record it is found that the permanent domicile of the father of the petitioner was Uttar Pradesh. His father was taking education in Swami Vivekanand Vidyalaya in Uttar Pradesh between the years 1970 to 1972. It is this order which is under challenge in the present petition.

5. It is the case of the petitioner that infact the domicile of the petitioner is State of Maharashtra and it is further case of the petitioner that his grandfather namely, Narayan Bachan Yadav has been a permanent resident of

Mumbai since last 45 years and was working as an employee in the Mazagaon Dock Limited at Mumbai. It has been further the case of the petitioner that even the father of the petitioner was a permanent resident of Mumbai and has been working in the Mazagaon Dock Limited since 16th April 1980. It is only for a period of two years that the father of the petitioner had gone to U.P. In so far as the petitioner himself is concerned, it is the case of the petitioner that the petitioner is born and brought up in Mumbai. He did his primary and secondary schooling in Mumbai. It is thus, the case of the petitioner that admittedly the petitioner belongs to the backward class since he is a 'Hindu-Ahir' and as such entitled to the benefit of the caste certificate. It is further the case of the petitioner that the refusal to grant the caste certificate on the purported ground that the petitioner's father was not domiciled in Maharashtra and thus the petitioner was not able to establish his domicile in Maharashtra is baseless and incorrect. It is further the grievance of the petitioner that all relevant records pertaining to

the domicile have not been considered by the said parties.

6. We are of the opinion that the Collector while rejecting the application for the caste certificate has not applied his mind properly to the facts and circumstances of the present case. Merely by relying upon the two years when petitioner's father was at U.P. i.e. for the period of 1970-72 and was studying there is not a sufficient ground to reject the caste claim certificate of the petitioner. The domicile of the petitioner has to be established not merely by looking at 2 years i.e. 1970-72 but by looking at a continuous domicile at a particular place. In view of the fact that the order suffers from various infirmities including non-application of mind, we are inclined to set aside the said order. We are further of the view that in the light of the Judgment of the Hon'ble Supreme Court of India, in the case of **Kumari Madhuri Patil and Anr. v. Addl. Commissioner, Tribal Development and Ors. reported in (1994) 6 Supreme Court Cases 241,** now

the caste certificate has to be validated by the Caste Scrutiny Committee and therefore the respondent no.3 in the aforesaid writ petition should be directed to issue the caste certificate to the petitioner and thereafter the same can be filed before the Caste Scrutiny Committee for its validation. We in the aforesaid circumstances, pass the following order:

(i) The respondent no.3 shall issue the caste certificate to the petitioner.

(ii) The Caste Scrutiny Committee shall decide the validity of such caste certificate in accordance with the direction contained in the order within a period of 3 months from the date of the receipt of the application for validation. The Caste Scrutiny Committee shall decide the matter in accordance with law.

(iii) Petition is disposed of accordingly. However, there shall be no order as to costs.

Parties to act on a copy of this order duly authenticated by the Court Stenographer.